

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED

MAR 19 2013

CLERK, US DISTRICT COURT
NORFOLK, VA

CHRISTOPHER CAIN,

Petitioner,

v.

Case No.: 2:11-cv-656

HENRY PONTON, Warden,

Respondent.

FINAL ORDER

This case arises from a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254. ECF Nos. 1, 5. The Petitioner, by counsel, alleges violations of his constitutional rights concerning the trial court's failure to declare a mistrial after the prosecution elicited testimony about a request for counsel and failed to turn over exculpatory evidence prior to trial.

On August 13, 2012, the Respondent filed a Rule 5 Answer, Motion to Dismiss, and brief in support, ECF Nos. 9-11, and the Petitioner filed a reply and brief in opposition on August 29, 2012, ECF Nos. 14-15. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), and Local Civil Rule 72 for a report and recommendation. The Report and

Recommendation was filed on February 19, 2013, and the Magistrate Judge recommended the Respondent's Motion to Dismiss be granted and the Petition be denied. ECF No. 17. By receiving a copy of the Report and Recommendation, the parties were advised of their right to file written objections to the Magistrate Judge's findings and recommendations. On March 1, 2013, the Court received the Petitioner's objections. ECF No. 18. The Respondent, however, has not responded to these objections, and the time to respond has now lapsed.

After reviewing the record and the Petitioner's objections, and having made *de novo* findings with respect to the portions objected to, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Magistrate Judge's Report and Recommendation filed on February 19, 2013, ECF No. 17, in its entirety as the Court's own opinion. Accordingly, the Court **ORDERS** the Respondent's Motion to Dismiss, ECF No. 9, be **GRANTED** and the Petition, ECF Nos. 1, 5, be **DENIED** for the reasons stated in the Report and Recommendation and further **ORDERS** judgment be entered in the Respondent's favor.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman

United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of judgment. Because the Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), pursuant to Federal Rule of Appellate Procedure 22(b), the Court declines to issue a certificate of appealability. See *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to all counsel of record.

It is so **ORDERED**.



Mark S. Davis
United States District Judge

Mark S. Davis
United States District Judge

Norfolk, Virginia
Date: March 18, 2013